

HONORABLE RICHARD A. JONES

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MITSUI SUMITOMO INSURANCE CO., LTD.; MITSUI SUMITOMO INSURANCE COMPANY OF AMERICA; MSIG INSURANCE & ADJUSTING (THAILAND) CO., LTD.; MITSUI SUMITOMO INSURANCE COMPANY (SINGAPORE) PTE., LTD.; MSIG INSURANCE (HONG KONG) LIMITED; MITSUI SUMITOMO INSURANCE (CHINA) COMPANY, LIMITED

Plaintiffs,

vs.

SPECTRUM BRANDS, INC.; JOHN DOE D/B/A RAYOVAC; JOHN DOE II; DHL GLOBAL FORWARDING (HONG KONG) LIMITED; and DHL ISC (HONG KONG) LIMITED

Defendants.

IN ADMIRALTY

Case No. C09-1738 RAJ

AMENDED COMPLAINT

Plaintiffs, through their undersigned counsel, allege:

1. Jurisdiction is proper in this case as it is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure. This case arises under the

AMENDED COMPLAINT -1-

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1 Carriage of Goods by Sea Act, 46 U.S.C. § 30701 (formerly codified at 46 U.S.C. § 1301 et.
2 seq.), and the general maritime law, is and involves damage to ocean cargo transported aboard
3 the S/S APL PERU from Asia to Seattle, Washington.

4 2. Venue is appropriate in this case as the voyage at issue terminated in Seattle,
5 Washington.

6 3. Plaintiff Mitsui Sumitomo Insurance Co., Ltd. ("MSI") is and was at all times
7 material a corporation organized and existing under the laws of Japan with its principal place
8 of business in Japan. At all times material, MSI insured Nippon Seiki Co., Ltd. ("Nippon
9 Seiki") pursuant to Policy No. 308-1000092623, and Nintendo of America, Inc. ("Nintendo")
10 pursuant to Policy No. WOP 01545C. Pursuant to the terms of the aforementioned policies,
11 MSI paid \$44,457.33 to Nippon Seiki and \$318,870.00 to Nintendo with respect to losses
12 described herein and thereby became subrogated to the rights of Nippon Seiki and Nintendo to
13 the extent of its payments.

14 4. MSI insured various other entities as identified on Exhibit A hereto pursuant to
15 the policies identified on Exhibit A with respect to certain cargo and/or containers aboard the
16 S/S APL PERU during the subject voyage. Pursuant to the terms of the policies identified on
17 Exhibit A (including the policies described above), MSI, on behalf of its assureds identified on
18 Exhibit A (including Nippon Seiki and Nintendo) issued general average guarantees on the
19 shipments and containers identified on Exhibit A in connection with the casualty described
20 below.

21 5. Plaintiff Mitsui Sumitomo Insurance Company of America ("MSI America") is
22 and at all times material has been a corporation organized under the laws of the state of New
23 York and its principal place of business is in New York, New York. At all times material, MSI
24 America insured Yokowo Manufacturing of America, LLC ("Yokowo") pursuant to Policy
25 No. OCM4000631. Pursuant to the terms of the aforementioned policy, MSI America paid

1 \$18,101.12 to Yokowo with respect to losses described herein and thereby became subrogated
2 to the rights of Yokowo to the extent of its payment.

3 6. MSI America, pursuant to the terms of the aforescribed policy, on behalf of
4 Yokowo, issued a general average guarantee for the shipment identified on Exhibit A in
5 connection with the casualty described below.

6 7. Plaintiff MSIG Insurance & Adjusting (Thailand) Co., Ltd. ("MSI Thailand") is
7 and was at all times material a corporation organized under the laws of Thailand and has its
8 principal place of business in Thailand. MSI Thailand, pursuant to the policies identified on
9 Exhibit A, insured the various entities identified on Exhibit A with respect to certain cargo
10 aboard the S/S APL PERU during the subject voyage. Pursuant to the terms of the policies
11 identified on Exhibit A, MSI Thailand, on behalf of its assureds identified on Exhibit A, issued
12 general average guarantees for the shipments identified on Exhibit A in connection with the
13 casualty described below.

14 8. Plaintiff Mitsui Sumitomo Insurance Company (Singapore) Pte., Ltd. ("MSI
15 Singapore") is and was at all times material a corporation organized under the laws of
16 Singapore and has its principal place of business in Singapore. MSI Singapore, pursuant to the
17 policy identified on Exhibit A, insured Sony of Canada Ltd. ("Sony Canada") with respect to
18 certain cargo aboard the S/S APL PERU during the subject voyage. Pursuant to said policy,
19 MSI Singapore, on behalf of Sony Canada, issued general average guarantees for the
20 shipments identified on Exhibit A in connection with the casualty described below.

21 9. Plaintiff MSIG Insurance (Hong Kong) Limited ("MSI Hong Kong") is and was
22 at all times material a corporation organized under the laws of Hong Kong, China, and has its
23 principal place of business in Hong Kong. MSI Hong Kong, pursuant to the policy identified
24 on Exhibit A, insured Sony Canada with respect to certain cargo aboard the S/S APL PERU
25 during the subject voyage. Pursuant to said policy, MSI Hong Kong, on behalf of Sony

1 Canada, issued general average guarantees for the shipments identified on Exhibit A in
2 connection with the casualty described below.

3 10. Plaintiff Mitsui Sumitomo Insurance (China) Company, Limited (“MSI China”)
4 is and was at all times material a corporation organized under the laws of China and has its
5 principal place of business in China. MSI China, pursuant to the policy identified on Exhibit
6 A, insured Huizhou Zhurun Wiring Systems Co., Ltd. and/or Sumitomo Wiring Systems, Inc.
7 (collectively “Huizhou”) with respect to certain cargo aboard the S/S APL PERU during the
8 subject voyage. Pursuant to said policy, MSI China, on behalf of Huizhou, issued a general
9 average guarantee for the shipments identified on Exhibit A in connection with the casualty
10 described below.

11 11. Defendant Spectrum Brands, Inc. (“Spectrum”) is believed to be a corporation
12 organized under one of the United States. Spectrum Brands, Inc. imports and sells batteries
13 under the brand name Rayovac.

14 12. Defendant DHL Global Forwarding (Hong Kong) Limited (“DHL Global”), on
15 information and belief, is an entity of unknown organization with an office in Hong Kong at
16 21/F., Tower 5, China, Hong Kong City, 33 Canton Road, Tsim Sha Tsui, Kowloon, Hong
17 Kong. DHL Global holds itself out to the public as an entity that assists with the transportation
18 of goods to the United States. On information and belief, plaintiffs allege that DHL Global
19 was acting on behalf of Spectrum, John Doe d/b/a Rayovac and/or John Doe II with respect to
20 the shipment of container APLU 9087454.

21 13. Defendant DHL ISC (Hong Kong) Limited (“DHL ISC”), on information and
22 belief, is an entity of unknown organization with an office in Hong Kong at 21/F., Tower 5,
23 China, Hong Kong City, 33 Canton Road, Tsim Sha Tsui, Kowloon, Hong Kong. DHL ISC
24 holds itself out to the public as an entity that assists with the transportation of goods to the
25 United States. DHL ISC is identified as the shipper on bill of lading APLU 052671163 issued

1 by APL for the transport of certain containers of goods, including container APLU 9087454,
 2 from Yantian, China to Seattle, Washington in or about September and October 2008.

3 14. On information and belief, plaintiffs allege that DHL ISC was acting on behalf
 4 of Spectrum, John Doe d/b/a Rayovac and/or John Doe II with respect to the shipment of
 5 container APLU 9087454.

6 15. Plaintiffs believe and therefore allege that one or more of the defendants was
 7 the shipper and/or owner of a shipment of Rayovac batteries which were loaded into container
 8 APLU 9087454. When plaintiffs learn the identity of any such John Doe defendants, an
 9 amended pleading will be filed to identify the entities properly.

10 16. On or about September 28, 2008, container APLU 9087454, with Rayovac
 11 brand batteries stowed within, was loaded onto the S/S APL PERU in Yantian, China, pursuant
 12 to bill of lading APLU 052671163 issued by APL, for transport across the Pacific Ocean to
 13 Seattle, Washington.

14 17. On or about October 5, 2008, while the S/S APL PERU was at sea en route to
 15 Seattle, Washington, a fire was detected by the crew in Hold No. 5 of the vessel. That fire
 16 continued and was still in progress when the S/S APL PERU arrived in Seattle on October 9,
 17 2008. After the hatch of Hold No. 5 was opened, it was learned that the goods in many
 18 containers within that hold had been damaged by fire, heat, water, and/or smoke resulting from
 19 the fire and the efforts to extinguish the fire. As a consequence of the casualty, the owner of
 20 the S/S APL PERU declared general average, thereby necessitating that plaintiffs issue general
 21 average guarantees on behalf of their respective assureds to effect the release and delivery of
 22 the cargo on board that was the subject of the insurance policies identified on Exhibit A.

23 18. Subsequent investigation established that the fire in Hold No. 5 of the S/S APL
 24 PERU described above was caused by ignition of the Rayovac batteries within container
 25 APLU 9087454.

1 19. Nippon Seiki was the shipper of goods stowed in container no. HDMU 5471197
 2 transported aboard the S/S APL PERU in Hold No. 5 on the voyage which terminated in
 3 Seattle on October 9, 2008. Said goods were damaged as a direct and proximate result of the
 4 fire in the hold and/or its aftermath, in an amount to be proven at trial.

5 20. Nintendo was the ultimate consignee of goods stowed in containers nos. CAXU
 6 460435-8, CRXU 408241-1 and MOFU 060366-3 transported aboard the S/S APL PERU in
 7 Hold No. 5 on the voyage which terminated in Seattle on October 9, 2008. Said goods were
 8 damaged as a direct and proximate result of the fire in the hold and/or its aftermath, in an
 9 amount to be proven at trial.

10 21. Yokowo was the ultimate consignee of goods stowed in container no. HDMU
 11 5471197 transported aboard the S/S APL PERU in Hold No. 5 on the voyage which terminated
 12 in Seattle on October 9, 2008. Said goods were damaged as a direct and proximate result of
 13 the fire in the hold and/or its aftermath, in an amount to be proven at trial.

14 22. The Carriage of Goods by Sea Act, 46 U.S.C. § 30701 (formerly codified at 46
 15 U.S.C. § 1301 et. seq.), contains two sections with respect to the obligations of shippers of
 16 cargo. Section 4(3) provides that the shipper shall be liable for loss or damage arising out of
 17 an "act, fault, or neglect of the shipper, his agents, or his servants." Section 4(6) provides that
 18 the shipper of "goods of an inflammable, explosive, or dangerous nature ... shall be liable for
 19 all damages and expenses directly or indirectly arising out of or resulting from such shipment."

20 23. Batteries of the type which defendants shipped and which caused the fire in
 21 Hold No. 5 are "inflammable, explosive, or dangerous" within the meaning of 46 U.S.C. §
 22 30701, Section 4(6).

23 24. Their inflammable, explosive or dangerous nature is demonstrated by the fire
 24 aboard the S/S APL PERU on or about October 5, 2008, as well as by previous fires on other
 25 container vessels caused by ocean and/or explosion of batteries shipped within containers.
 Defendants had a duty to properly stow the subject battery cargo within the container to ensure

1 its safe transit, but failed to do so. Defendants, furthermore, had a duty to warn the ocean
2 carrier of the batteries' inherent dangers, but failed to do so.

3 25. Defendants by their own acts and/or omissions and/or the acts and/or omissions
4 of their respective agents or servants, were negligent with respect to the stowage of their
5 batteries within container APLU 9087454 and their failure to warn the ocean carrier of the
6 batteries' inherent dangers, and are liable for any and all damages incurred by plaintiffs,
7 including any and all sums plaintiffs ultimately are adjudged to have to pay as general average
8 contributions, proximately caused by their negligence.

9 26. In the alternative, as a result of the "inflammable, explosive, or dangerous"
10 nature of the batteries within container APLU 9087454, defendants are strictly liable under
11 COGSA for any and all damages incurred by plaintiffs, including any and all sums plaintiffs
12 ultimately are adjudged to have to pay as general average contributions, directly or indirectly
13 arising out of the subject battery shipment.

14 WHEREFORE, plaintiffs pray for judgment against defendants severally and jointly as
15 follows:

- 16 1. For judgment in an amount to be proven at trial;
17 2. Prejudgment interest;
18 3. Plaintiffs' fees and costs herein; and
19 4. For such other and further relief as this court may deem just and equitable.

20 Dated this 17th day of December, 2009.

21 DANIELSON HARRIGAN LEYH & TOLLEFSON LLP
22

23 By /s/ Michelle Buhler
24 Michelle Buhler, WSBA #16235
Attorneys for Plaintiffs
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EXHIBIT A

EXHIBIT A

Mitsui Sumitomo Ins. Co., et al. v. Spectrum Brands, Inc., et al. APL PERU

Shipper	Carrier	Booking No.	Doc. No.	B/L No.	Bill of Lading	Invoice Value	CIF or FOB	Container No.
M.S. Japan	Nintendo	WOP01545C	MOLU458301591	MOL		672,000.00	US\$	672,000.00
M.S. Japan			MOLU458301556	MOL		23,443,380.00	US\$	23,443,380.00
M.S. Japan			MOLU458329830	MOL		18,019,968.00	US\$	18,019,968.00
Sanyo		308-SDSS000950	6711058959	Expeditors Int'l		33,637.90	US\$	33,637.90
M.S. Japan	Casio America, Inc.	OIP 276475	PNWBD0019734	Hyundai Merchant		108,212.00	US\$	112,284.00
M.S. Japan	Sharp	H97-151421	MOLU45833249	MOL	\$105,685.22 (C&I)		US\$	109,718.50
M.S. Japan	Yamaha Corp.	308-KK08KBA200	APLU073674885	APL	56,746.53		C\$	56,745.53
M.S. Japan			APLU073657815	APL	32,818.77		C\$	32,818.77
M.S. Japan			APLU073674832	APL	98,728.94		C\$	98,728.94
M.S. Japan			APLU073674618	APL	47,382.48		C\$	47,382.48
M.S. Japan			APLU073657808	APL	42,566.15		C\$	42,566.15
M.S. Japan			APLU073674750	APL	92,676.79		C\$	92,676.79
M.S. Japan			APLU073657812	APL	42,087.44		C\$	42,087.44
M.S. Japan	Nippo Seiki	91-5157102	HKKGCH108091874	MOL	402,475.47		C\$	402,475.47
M.S. Japan	Sony of Canada Ltd.	89-420153	PENP0809001299	CRSA Logistics Ltd.	92,287.88		US\$	101,516.67
M.S. Japan	Mitsui OSK Lines	308-1200000219	N/A	N/A	1,055,533.00		US\$	N/A
M.S. Thailand	Ajinomoto Thailand	BKD1CEXP/08-126038	BMI185571	LEO	277,140.00		US\$	277,140.00
M.S. Thailand	Mitsui Siam Component	BKD1CEXP/08-	MTLJ080936	TRINET				499,695.67

MSI Spore	11/10/09	126300			499,695.67	US\$
American Honda Motor Company, Inc.	BK93-1003	APLU027710321	APL	151,355.25	US\$	151,355.25
		APLU027710327	APL	113,560.96	US\$	113,560.96
		APLU027710320	APL	161,561.00	US\$	161,561.00
Yokowa Manufacturing of America, LLC	OCM4000631	HHKGCHI08091781	Dynamic Container Line	16,163.04	US\$	16,321.43
Sony of Canada Ltd.	RMA/OP/96-049	PENP0809001290	CRSA Logistics Ltd.	72,268.15	US\$	79,494.97
Sony of Canada Ltd.	RMA/OP/96-049	PENP0809001291	CRSA Logistics Ltd.	4,506.12	US\$	4,956.73
Sony of Canada Ltd.	RMA/OP/96-049	PENP0809001292	CRSA Logistics Ltd.	132,712.32	US\$	145,983.55
Sony of Canada Ltd.	RMA/OP/96-049	PENP0809001293	CRSA Logistics Ltd.	132,712.32	US\$	145,983.55
Sony of Canada Ltd.	RMA/OP/96-049	PENP0809001294	CRSA Logistics Ltd.	92,368.11	US\$	101,804.92
Sony of Canada Ltd.	RMA/OP/96-049	PENP0809001295	CRSA Logistics Ltd.	196,482.00	US\$	216,130.20
Sony of Canada Ltd.	RMA/OP/96-049	PENP0809001296	CRSA Logistics Ltd.	419,142.00	US\$	461,056.20
Sony of Canada Ltd.	RMA/OP/96-049	PENP0809001297	CRSA Logistics Ltd.	51,639.50	US\$	56,803.45
Sony of Canada Ltd.	RMA/OP/96-049	PENP0809001298	CRSA Logistics Ltd.	49,372.40	US\$	54,309.64
Sony of Canada Ltd.	RMA/OP/96-049	PKGP0809000894	CRSA Logistics Ltd.	261.08	US\$	287.19
Sony of Canada Ltd.	RMA/OP/96-049	PKGP0809000896	CRSA Logistics Ltd.	302,465.30	US\$	332,711.83
Sony of Canada Ltd.	RMA/OP/96-049	PKGP0809000901	CRSA Logistics Ltd.	275,074.80	US\$	302,582.28

Product	Assigned To	Part No.	Serial No.	Entered Date	Entered By	Entered At	Entered From
Welding	Sony of Canada Ltd.	RMA40P/98-049	SGNP0809001456	CRSA Logistics Ltd.	242.64	US\$	266.90
MSI Hong Kong	Sony of Canada Ltd.	CA00000102	YTNV080901504	CRSA Logistics Ltd.	102,128.22	US\$	112,341.04
MSI Hong Kong	Sony of Canada Ltd.	CA00000102	YTNV080901505	CRSA Logistics Ltd.	887,012.70	US\$	975,713.97
MSI Other	Huizhou Zhurun Wiring Systems Co., Ltd. / Sumitomo Wiring Systems, Inc.	KC10700165	TNJSMID070153	TRINET	520,240.00	US\$	572,264.00